

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

UNITED STATES OF AMERICA,

Plaintiffs,

v.

ORMET PRIMARY ALUMINUM
CORPORATION,

Defendants.

CIVIL ACTION NO. C2-95-947

JUDGE JOHN D. HOLSCHUH

AMENDMENT TO THE CONSENT DECREE

I. Background

1. The United States of America ("United States"), on behalf of the United States Environmental Protection Agency ("EPA") and Ormet Primary Aluminum Corporation ("Ormet Primary" or "Settling Defendant"), entered into a Consent Decree ("Consent Decree") approved by the Court on December 15, 1995. This Amendment to the Consent Decree ("Amendment") memorializes modifications to the Consent Decree to reflect the current status of the Work and Ormet Primary's obligations under the Consent Decree, as agreed to by the Parties. The Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1345, and 42 U.S.C. §§ 9606, 9607 and 9613(b). The Court retains personal jurisdiction over the Settling Defendant.

2. The Consent Decree required the Settling Defendant to undertake Work (e.g., Remedial Design, Remedial Action, Operation and Maintenance) to address releases or a substantial threat of a release of hazardous substances at the Site.

3. Section XIV of the Consent Decree required the Settling Defendant to establish and maintain Financial Assurance in the amount of \$8,238,145.00. The Financial Assurance is to ensure completion of the Remedial Design, Remedial Action and Operation and Maintenance ("O&M") of the Remedial Action components until Performance Standards have been achieved. The Settling Defendant initially demonstrated Financial Assurance pursuant to Paragraph 43(e) of the Consent Decree by meeting the financial test criteria established in 40 C.F.R. § 264.143(f)(1).

4. The Settling Defendant completed construction of the Remedial Action in August 1998 and the EPA approved its Construction Completion Report pursuant to Paragraph 47(a) of the Consent Decree. Therefore, the Settling Defendant no longer needs to provide Financial Assurance to cover the cost of Remedial Design and Remedial Action Construction.

5. The Settling Defendant continues to be required under Paragraph 43 of the Consent Decree to provide Financial Assurance for O&M activities (i.e., funding to be used solely to continue the effective operation and oversight of all systems put in place during the Remedial Action).

6. In June 2007, the Settling Defendant provided information requested by the EPA regarding the historical costs of performing the O&M activities required by the Consent Decree. Based on the information, the EPA estimated the future cost of performing O&M until Performance Standards are achieved, and determined the amount of \$3,400,000.00 is required to satisfy the Settling Defendant's Financial Assurance obligation under the Consent Decree.

7. The Consent Decree stipulated in Paragraph 44 that in the event the EPA determines at any time the Financial Assurance provided pursuant to Section XIV of the Consent Decree is inadequate, the Settling Defendant shall, within thirty (30) days of receipt of notice of the EPA's determination, obtain and submit for the EPA's approval one of the other forms of Financial Assurance listed in Paragraph 43 of the Consent Decree.

8. The EPA determined in April 2007 that the Settling Defendant was no longer able to demonstrate it satisfied the financial test criteria of 40 C.F.R. § 264.143(f), the mechanism of Financial Assurance it originally established pursuant to Paragraph 43(e) of the Consent Decree. The EPA also determined the Settling Defendant had not submitted annual certifications since 2001 stating that it satisfied the financial test criteria of 40 C.F.R. § 264.143(f), as is required by Paragraph 44 of the Consent Decree. The EPA further determined that the Settling Defendant did not have in place one of the alternate forms of Financial Assurance listed in Paragraph 43 of the Consent Decree.

9. During the time the Settling Defendant has been unable to provide Financial Assurance to cover O&M activities, the Settling Defendant has continued to perform O&M (i.e., Work) as required by the Consent Decree. On December 21, 2007, the Settling Defendant, in partial fulfillment of its Financial Assurance obligation under the Consent Decree, provided the EPA with an irrevocable letter of credit, in a form acceptable to the EPA, for the sum of \$600,000.00. The sum of \$600,000.00 currently represents the cost to cover O&M activities for two years. On July 29, 2008, pursuant to an agreement with the Settling Defendant which is memorialized in Paragraph 19 of this Amendment, the letter of credit was amended and increased by \$600,000.00 for an aggregate total of \$1,200,000.00.

10. Pursuant to Paragraph 9(b) of the Consent Decree and Paragraph 2 of the Statement of Work (Appendix B to the Consent Decree), the Settling Defendant is required to establish and file with the Register of Deeds, Monroe County, Ohio, a notice of obligation to provide access and restrictive covenants applicable to the Site as set forth in Appendix D to the Consent Decree. To comply with this requirement, the Settling Defendant on January 10, 1996, filed a Notice of Obligation to Provide Access and Related Covenants with the Monroe County Register of Deeds. This document included a "Declaration of Restriction on Use of Real Property" ("Declaration"). The real property covered by this Declaration is the approximately 47-acre portion of the Ormet Reduction Plant Property comprising the Site, specifically described and mapped in Appendix C to the Consent Decree.

11. The EPA in its May 2007 Five Year Review of the Site determined that the restrictive covenants recorded by the Settling Defendant in 1996 were insufficient given that the contaminated groundwater plume currently extends onto a portion of the Reduction Plant Property where active manufacturing is conducted and on which there are no use restrictions running with the land that prohibit well construction, use of groundwater for potable purposes or prohibiting interference with operation and maintenance of monitoring wells located on the property. The 2007 Five Year Review concluded that in order to ensure long term protectiveness, such use restrictions should be implemented on the entire Reduction Plant Property.

12. In July 2007, Hannibal Real Estate, LLC acquired property from the Ormet Aluminum Mill Products Corporation which is located adjacent to the Reduction Plant Property. This sold property, the Rolling Mill Property, had been utilized by the Ormet Aluminum Mill Products Corporation to operate a rolling mill and has an inactive Ranney well. The Rolling Mill

Property is currently being utilized by Artco Group International, Inc., under a lease with Hannibal Real Estate, LLC., to operate a steel fabrication facility. The Rolling Mill Property is currently subject to an environmental investigation and evaluation under Ohio's Voluntary Action Program ("VAP") and an environmental covenant will be executed and recorded with the Register of Deeds, Monroe County, Ohio, which places restrictions on the use of the Rolling Mill Property. The EPA believes that certain restrictions on the Rolling Mill Property may be necessary in order to prohibit certain activities which would interfere with or adversely affect the implementation, integrity or protectiveness of the remedial measures under the Consent Decree.

13. Pursuant to Paragraph 103 of the Consent Decree, the United States provided the State of Ohio with reasonable opportunity to review and comment on the proposed Amendment.

14. The Parties recognize, and the Court by entering this Amendment agrees, that this Amendment has been negotiated by the Parties in good faith and implementation of this Amendment will expedite resolution of the outstanding issues regarding Financial Assurance and implementation of institutional controls, and will avoid prolonged and complicated litigation between the Parties, and that this Amendment is fair, reasonable, and in the public interest.

NOW, THEREFORE, it is hereby Ordered, Adjudged, and Decreed:

II. Effect of this Amendment to the Consent Decree

15. Nothing in this Amendment shall be deemed to modify the Consent Decree or alter the Settling Defendant's obligations under the Consent Decree except as specifically set forth in this Amendment.

III. Definitions

16. The Definitions set forth in Section IV of the Consent Decree are modified and supplemented as set forth below. Unless modified herein, all definitions set forth in the Consent Decree remain unchanged, and are incorporated herein by reference.

- a. "Consent Decree" shall mean the Consent Decree entered by the Court on December 15, 1995 (United States of America v. Ormet Primary Aluminum Corporation, Civil Action No. C2-95-947), this Amendment to Consent Decree, and all appendices attached hereto (listed in Section XXX of the Consent Decree and Section IX of this Amendment). In the event of conflict between the Consent Decree (including the Amendment) and any appendix, the Consent Decree shall control.
- b. "Effective Date of Amendment" shall be the effective date of this Amendment as provided in Paragraph 61.
- c. "Financial Assurance" shall mean the demonstration that financial resources are available to undertake the required activities under the Consent Decree.
- d. "Future Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that the United States incurs in reviewing or developing plans, reports and other items pursuant to this Consent Decree, verifying the Work, or otherwise implementing, overseeing, or enforcing this Consent Decree, including, but not limited to, payroll costs, contractor costs, travel costs, laboratory costs, the costs incurred pursuant to Sections VII, VIII and XVI of the Consent Decree and Section VI and Paragraphs 47, 48 and 49 of Section VII of this Amendment (including, but not limited to, the cost of attorney time, any monies paid to secure

access and/or to secure or implement institutional controls, the amount of just compensation). Future Response Costs shall also include all costs, including direct and indirect costs, paid by the United States in connection with the Site between December 31, 1994 and the effective date of the Consent Decree.

- e. "Lender" shall mean the financial institution(s) to which the Settling Defendant owes debt and are regulated by the Federal Reserve Board, the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Office of Thrift Supervision, State Bank Supervisors, and/or the Financial Industry Regulatory Authority. This definition includes syndicates of Lenders (e.g., such as the signatories to the existing Loan & Security Agreement, Wachovia Capital Finance Corp. (February 14, 2007)) and Subordinate Note Agreement (UBS Willow Fund LLC, SV Special Situation Master Fund LTD, Pierce Diversified Strategy Master Fund LLC and Southpoint Master Fund LP (November 1, 2007)).
- f. "LME price for aluminum" shall mean the London Metals Exchange official (US\$/tonne) cash seller and settlement price for aluminum of 99.7% purity or greater.
- g. "Reduction Plant Property" shall mean the property comprising the Ormet Primary Aluminum Corporation facility located on the west bank of the Ohio River at 43840 State Rt. 7, Hannibal, Ohio. The total acreage of the Reduction Plant Property is 317.122 acres. The Site is located on the eastern portion of the Reduction Plant Property. Appendix C-1 of this Amendment to the Consent Decree provides the legal definition and a map of the Reduction Plant Property.

- h. "Rolling Mill Property" shall mean the property located immediately to the west of the Reduction Plant Property and encompassing an area of 122.1 acres. The Rolling Mill Property was formerly owned by Ormet Aluminum Mills Products Corporation and operated as a rolling mill.
- i. "Site" shall mean the Ormet Superfund Site located on the eastern portion of the Reduction Plant Property. The total acreage of the Site is 45.355 acres. Appendix C-1 of this Amendment to the Consent Decree provides the legal definition and a map of the Site.

IV. Assurance of Ability to Complete Work

17. Section XIV of the Consent Decree, Assurance of Ability to Complete Work, is modified to incorporate Paragraphs 18 through 33, below, which addresses Financial Assurance required for Operation and Maintenance ("O&M") under the Consent Decree.

18. In accordance with the timetable set forth in Paragraph 19, below, the Settling Defendant shall establish and maintain Financial Assurance required for O&M under the Consent Decree in the total amount of \$3,400,000.00. The Financial Assurance shall be for the benefit of the EPA and in the form of one or more irrevocable letters of credit acceptable to the EPA, payable to or at the direction of the EPA. The letter(s) of credit can be issued by one or more financial institutions as long as the issuing financial institution: (a) has the authority to issue letters of credit, and (b) the letter-of-credit operations are regulated and examined by a U.S. Federal or State agency. The Settling Defendant has currently provided the EPA with an irrevocable letter(s) of credit for the sum of \$1,200,000.00, in partial compliance with this requirement.

19. The Settling Defendant will fully fund the total amount of Financial Assurance (\$3,400,000.00) no later than December 21, 2009, as follows:

a. The Settling Defendant shall provide additional Financial Assurance based upon the market price of aluminum as set forth below:

- (1) If the average LME for aluminum for any calendar quarter in 2008 and 2009 is between \$2,770 and \$2,849 per tonne, the Settling Defendant will provide an additional \$300,000.00 in Financial Assurance secured by an irrevocable letter of credit in a form acceptable to the EPA within thirty (30) days of the end of the quarter; or
- (2) If the average LME for aluminum for any calendar quarter in 2008 and 2009 is \$2,850 or above per tonne, the Settling Defendant will provide an additional \$600,000.00, secured by an irrevocable letter of credit acceptable to the EPA within thirty (30) days of the end of the quarter.

The aggregate of the letters of credit must equal, but shall not exceed, the sum of \$3,400,000.00 by December 21, 2009.

b. If the total amount of Financial Assurance provided by the Settling Defendant to the EPA pursuant to Paragraphs 18 and 19 has not equaled \$3,400,000.00 on or before December 21, 2009, the Settling Defendant by December 21, 2009 shall provide an additional amount of Financial Assurance, sufficient to bring the total amount of Financial Assurance to \$3,400,000.00, in the form of an irrevocable

letter of credit acceptable to the EPA (whether through a new letter of credit or an increase in the amount of the existing letter of credit).

20. Until such time as the Settling Defendant has fully funded its Financial Assurance obligation in accordance with Paragraphs 18 and 19, above, the Settling Defendant shall notify the EPA in writing of any of the following events:

- a. The occurrence of any event of default requiring notice to the Settling Defendant's Lenders under any of the Settling Defendant's loan, credit or financing agreements including but not limited to its existing Loan & Security Agreement and Subordinate Note Agreement. The Settling Defendant shall provide notice to the EPA within ten (10) business days of the default and in accordance with Section XXVII (Notices and Submissions) of the Consent Decree. Such notice to the EPA shall provide the following information: (1) the nature of the default; (2) the activities undertaken or to be undertaken by the Settling Defendant to cure the default and the time frame; and (3) any response by Lenders, creditors, guarantors, regulators and stockholders to the default.
- b. The Settling Defendant's entry into any new, or modification to any existing, credit or loan agreements including (but not limited to) senior secured credit agreement, term loans, revolving credit agreement.
- c. The Settling Defendant's notification to the Securities and Exchange Commission ("SEC") of its intent to issue registered securities or the occurrence of an event described in the SEC Form 8-K, set forth in 17 C.F.R. § 249.308, Form 8-K Item 3.02 (Unregistered Sales of Equity Securities) which prescribes the disclosure of

sales of equity securities in a transaction that is not registered under the Securities Exchange Act, 15 U.S.C. § 78a *et seq.*

- d. The occurrence of an event described in SEC Form 8-K, set forth in 17 C.F.R. § 249.308, Form 8-K Item 5.01 (Changes in Control of Registrant) which prescribes disclosure of changes in the registrant's board of directors, a committee of the board of directors or authorized officer or officers of the Settling Defendant, and Item 5.02 (Departure of Directors or Principal Officers; Election of Directors; Appointment of Principal Officers) which prescribes the disclosure of changes in the Settling Defendant's Board of Directors or Principal Officers.

21. For the first six (6) months, on a monthly basis, following the Effective Date of this Amendment, the Settling Defendant shall provide the EPA with the company's financial statements that it provides to its Lenders. These financial statements are due within ten (10) business days after the Settling Defendant provides such statements to its Lenders. Thereafter, the Settling Defendant will provide the financial statements every third month.

22. The EPA reserves the right to determine at any time that the Financial Assurance provided by the Settling Defendant pursuant to this Section is inadequate or otherwise no longer satisfies the requirements set forth in this Section, whether due to an increase in the estimated cost of the Work or for such reasons as the incapacity of the Settling Defendant, the incapacity of the financial institution issuing the Financial Assurance (e.g., suspension of the authority of the institution issuing the letter of credit to issue such instrument), the incapacity of a Guarantor, and the incapacity or inadequacy of the financial mechanism (e.g., letter of credit).

- a. In the event that the Settling Defendant becomes aware of information indicating that the Financial Assurance provided pursuant to this Section may be inadequate

or otherwise no longer satisfies the requirements set forth in this Section, whether due to an increase in the estimated cost of completing the Work or for such reasons as the incapacity of the Settling Defendant, the incapacity of the financial institution issuing the Financial Assurance (e.g., suspension of the authority of the institution issuing the letter of credit to issue such instrument), the incapacity of a Guarantor, and the incapacity or inadequacy of the financial mechanism (e.g., letter of credit), the Settling Defendant within five (5) days of such discovery shall provide such information to the EPA in conformance with Section XXVII (Notices and Submissions) of the Consent Decree.

- b. If the EPA determines that the Financial Assurance provided pursuant to this Section is inadequate or no longer satisfies the requirements set forth in this Section, the EPA shall inform the Settling Defendant of any such determination pursuant to the Section XXVII (Notices and Submissions) of the Consent Decree.

23. The Settling Defendant, within thirty (30) days of receiving EPA's determination under Paragraph 22, shall obtain and submit to the EPA for approval a proposal for a revised or alternate form of Financial Assurance listed in Paragraph 25 of this Amendment that satisfies all requirements set forth in this Section. In seeking approval for a revised or alternate form of Financial Assurance, the Settling Defendant shall follow the procedures set forth in this Paragraph. The Settling Defendant's inability to post the Financial Assurance for completion of the Work shall not alter the Settling Defendant's obligation to comply with any other requirements of the Consent Decree (or this Amendment), including, without limitation, the obligation of the Settling Defendant to complete the Work in accordance with the terms of the Consent Decree (or this Amendment).

- a. The Settling Defendant shall submit a written proposal for a revised or alternate form of Financial Assurance to the EPA which shall specify the estimated cost of the remaining Work to be performed, the basis upon which such cost was calculated, and the proposed revised or alternate form of Financial Assurance, including all proposed instruments or other documents required in order to make the proposed Financial Assurance legally binding. The proposed revised or alternate form of Financial Assurance must satisfy all requirements set forth or incorporated by reference in this Section. The Settling Defendant shall submit such proposed revised or alternate form of Financial Assurance to the EPA Superfund Division Director in accordance with Section XXVII (Notices and Submissions) of the Consent Decree, with a copy to the Remedial Project Manager.
- b. The EPA shall notify the Settling Defendant in writing of its decision to accept or reject a revised or alternate form of Financial Assurance.
 - (1) If the EPA rejects the proposed revised or alternate form of Financial Assurance, the EPA shall provide the Settling Defendant with an explanation for its disapproval. The Settling Defendant shall have ten (10) business days to correct the deficiencies identified by the EPA and resubmit the proposed revised or alternate form of Financial Assurance for the EPA's review. Failure to resubmit an approvable revised or alternate form of Financial Assurance within the time frame set forth in this subparagraph shall be deemed a violation of the Consent Decree subject to stipulated penalties pursuant to Paragraph 53.c of this Amendment.

- (2) Within ten (10) business days after receiving a written decision approving the proposed revised or alternate form of Financial Assurance, the Settling Defendant shall execute and/or otherwise finalize all instruments or other documents required in order to make the selected Financial Assurance(s) legally binding in a form substantially identical to the documents submitted to the EPA as part of the proposal, and such Financial Assurance(s) shall thereupon be fully effective.
- c. The Settling Defendant shall submit to the EPA Superfund Division Director all executed and/or otherwise finalized instruments or other documents required in order to make the selected Financial Assurance(s) legally binding within thirty (30) days of receiving a written decision approving the proposed revised or alternate Financial Assurance in accordance with Section XXVII (Notices and Submissions) of the Consent Decree, with a copy to the Remedial Project Manager as specified in Section XXVII of the Consent Decree.
- d. The Settling Defendant shall not cancel the existing Financial Assurance, though it has been deemed inadequate or otherwise no longer satisfying the requirements of this Section, until the Settling Defendant has revised or obtained alternate Financial Assurance, the revised or alternate form of Financial Assurance has been approved by the EPA and the EPA has given its written consent permitting the Settling Defendant to cancel the existing Financial Assurance.
24. Any dispute arising under Paragraph 22 concerning the EPA's determination that the Financial Assurance provided by the Settling Defendant is inadequate or otherwise no longer satisfies the requirements of this Section, or under Paragraph 23 concerning the EPA's rejection

of the proposed revised or alternate form of Financial Assurance, shall be resolved in accordance with Section XX (Dispute Resolution) of the Consent Decree, except in the following instances where such a determination is within the EPA's sole and unreviewable discretion, and such decision shall not be subject to challenge by the Settling Defendant pursuant to Section XX (Dispute Resolution) of the Consent Decree or any other forum.

- a. For trust operations, regulated and examined by a Federal or State agency, the Trustee no longer has the authority to act as a trustee.
- b. The institution issuing the surety bond is no longer listed as an acceptable surety on Federal Bonds in Circular 570 of the U.S. Department of Treasury.
- c. The institution whose letter of credit operations, regulated and examined by a Federal or State agency, is no longer an entity which has the authority to issue letters of credit.
- d. The Insurer is no longer licensed to transact business of insurance or eligible to provide insurance as an excess or surplus lines insurer, in one or more States.
- e. The Insurer no longer meets the minimum threshold of a rating of A or better from A.M.Best.
- f. The guarantor or institution providing the financial mechanism is the subject of a bankruptcy (including rehabilitation and liquidation activities associated with insurance companies).

25. Subject to Paragraph 26, the following are forms of Financial Assurance that the Settling Defendant may utilize when seeking to provide alternate Financial Assurance pursuant to this Section. The form and substance of the Financial Assurance must be satisfactory to the EPA. The Settling Defendant shall request, prior to its submission for approval of an alternate

form of Financial Assurance, any models or guidance the EPA has publically provided on the forms of Financial Assurance found in this Paragraph.

- a. A surety bond unconditionally guaranteeing payment and/or performance of the Work that is issued by a surety company among those listed as acceptable sureties on Federal bonds as set forth in Circular 570 of the U.S. Department of the Treasury.
- b. One or more irrevocable letters of credit, payable to or at the direction of the EPA, that is issued by one or more financial institution(s): (1) that has the authority to issue letters of credit; and (2) whose letter-of-credit operations are regulated and examined by a U.S. Federal or State agency.
- c. A trust fund established for the benefit of the EPA that is administered by a trustee: (1) that has the authority to act as a trustee; and (2) whose trust operations are regulated and examined by a U.S. Federal or State agency.
- d. A policy of insurance that: (1) provides the EPA with acceptable rights as a beneficiary thereof; and (2) is issued by an insurance carrier: (i) that has the authority to issue insurance policies in the applicable jurisdiction(s), (ii) whose insurance operations are regulated and examined by a State agency, and (iii) has a rating by the rating company, A.M. Best, of "A" or greater.
- e. A financial demonstration by the Settling Defendant that it meets the financial test criteria of 40 C.F.R. § 264.143(f) with respect to the costs of the Work, provided that all other requirements of 40 C.F.R. § 264.143(f) are satisfied.
- f. A written guarantee to fund or perform the Work executed in favor of the EPA by one or more of the following: (1) a direct or indirect parent company of the

Settling Defendant; or (2) a company that has a "substantial business relationship," as defined in 40 C.F.R. § 264.141(h), with the Settling Defendant; provided, however, that any person providing such a guarantee must demonstrate to the satisfaction of the EPA that it satisfies the financial test criteria of 40 C.F.R. § 264.143(f) with respect to the cost of the Work that it proposes to guarantee hereunder.

For purposes of the Financial Assurance forms specified in this Section, references to 40 C.F.R. Part 264, Subpart H, to "closure," "post-closure," and "plugging and abandonment" shall be deemed to refer to the Work required under the Consent Decree and this Amendment, and the terms "current closure cost estimate," "current post-closure cost estimate," and "current plugging and abandonment cost estimate" shall be deemed to refer to the costs of the Work.

26. The Settling Defendant is subject to the following limitation when seeking to establish an alternate form of Financial Assurance pursuant to Paragraphs 23 and 30 of this Amendment.

- a. After December 21, 2009, the Settling Defendant may establish and seek the EPA's approval of any of the forms of Financial Assurance described in Paragraphs 25.a-f. If the Settling Defendant is establishing and seeking approval for the use of the financial demonstration, pursuant to Paragraph 25.e, the Settling Defendant shall only utilize this form of Financial Assurance in conjunction with a form of Financial Assurance provided for in Paragraphs 25.a-d. The Financial Assurance provided by the letter of credit, trust, surety or insurance (i.e., third-party financial mechanisms), Paragraphs 25.a-d, must cover at least two (2) years of the cost to perform the Work under the Consent Decree.

- b. If the Settling Defendant utilizes the financial demonstration, when establishing the financial test criteria under 40 C.F.R. § 264.143(f), the Settling Defendant shall subtract the cost of the Work covered by the third-party financial mechanism from the total cost of the Work required under the Consent Decree to calculate the cost of the Work to be covered by the financial demonstration.

27. If at any time during the effective period of the Consent Decree, but subsequent to December 21, 2009, the Settling Defendant provides Financial Assurance for the completion of the Work by means of a financial demonstration or written guarantee as described in Paragraphs 25.e and 25.f, above, the Settling Defendant and/or guarantor must also comply with the other relevant requirements of 40 C.F.R. §§ 264.143(f), 264.151(f) and 264.151(h)(1) unless otherwise provided in this Amendment, including but not limited to: (a) the initial submission of required financial reports and statements from the relevant entity's chief financial officer and independent certified public accountant; (b) the annual re-submission of such reports and statements within ninety (90) days after the close of each such entity's fiscal year; and (c) the notification of the EPA within ninety (90) days of the close of any fiscal year in which such entity no longer satisfies the financial test criteria set forth in 40 C.F.R. § 264.143(f)(1).

28. The commencement of any Work Takeover pursuant to Section VII of this Amendment shall trigger the EPA's right to receive the benefit of any Financial Assurance provided pursuant to this Section, and at such time the Settling Defendant shall provide the EPA with immediate access to resources guaranteed under any such Financial Assurance(s), whether in cash or in kind, as needed to continue and complete the Work assumed by the EPA under the Work Takeover. If for any reason the EPA is unable to promptly secure the resources guaranteed under any such Financial Assurance(s), whether in cash or in kind, necessary to continue and

complete the Work assumed by the EPA under the Work Takeover, the Settling Defendant shall immediately upon written demand from the EPA deposit into an account specified by the EPA, in immediately available funds and without setoff, counterclaim, or condition of any kind, a cash amount up to but not exceeding the estimated cost of the remaining Work to be performed as of such date, as determined by the EPA.

29. If the Settling Defendant believes that the estimated cost to complete the remaining Work has diminished below the amount set forth in Paragraph 18, above, the Settling Defendant may, once a calendar year, petition the EPA in writing to request a reduction in the amount of the Financial Assurance provided pursuant to this Section so that the amount of the Financial Assurance is equal to the estimated cost of the remaining Work to be performed. The Settling Defendant shall submit a written proposal for such reduction to the EPA that shall specify, in detail, the cost of the remaining Work to be performed and the basis upon which such cost was calculated. The Settling Defendant may request a reduction in the amount of Financial Assurance annually by providing the petition and all required documentation. The EPA shall notify the Settling Defendant, in writing, of its decision to either accept or reject the Settling Defendant's proposal. After receiving the EPA's written acceptance, the Settling Defendant may reduce the amount of the Financial Assurance in accordance with and to the extent permitted by such written acceptance. In seeking approval for a revised or alternate form of Financial Assurance reflecting the reduction in Financial Assurance based on the revised cost, the Settling Defendant shall follow the procedures set forth in Paragraph 31 of this Amendment. Any dispute as to the cost of the remaining Work under the Consent Decree shall be resolved in accordance with Section XX (Dispute Resolution) of the Consent Decree. In the event of a dispute, the

Settling Defendant may reduce the amount of the Financial Assurance required hereunder only in accordance with a final administrative or judicial decision resolving such dispute.

30. If the Settling Defendant desires to change the form or terms of any Financial Assurance(s) provided pursuant to this Section, the Settling Defendant may petition the EPA in writing to request a change in the form of the Financial Assurance provided for under this Amendment. The submission of such proposed revised or alternate form of Financial Assurance shall comply with the procedures set forth in Paragraph 31 of this Amendment. Any decision made by the EPA on a petition submitted under this Paragraph shall be made in the EPA's sole and unreviewable discretion, and such decision shall not be subject to challenge by the Settling Defendant pursuant to Section XX (Dispute Resolution) of the Consent Decree or in any other forum.

31. The Settling Defendant is subject to the following procedures when seeking a revised or alternate form of Financial Assurance pursuant to Paragraphs 29 and 30 of this Amendment.

- a. The Settling Defendant shall submit a written proposal for a revised or alternate form of Financial Assurance to the EPA which shall specify the estimated cost of the remaining Work to be performed, the basis upon which such cost was calculated, and the proposed revised form of Financial Assurance, including all proposed instruments or other documents required in order to make the proposed Financial Assurance legally binding. The proposed revised or alternate form of Financial Assurance must satisfy all requirements set forth or incorporated by reference in this Section. The Settling Defendant shall submit such proposed revised or alternate form of Financial Assurance to the EPA Superfund Division

Director in accordance with Section XXVII (Notices and Submissions) of the Consent Decree, with a copy to the Remedial Project Manager.

- b. The EPA shall notify the Settling Defendant in writing of its decision to accept or reject a revised or alternate Financial Assurance submitted pursuant to this Section.
- c. If the EPA approves the revised or alternate Financial Assurance, the Settling Defendant shall: (1) within ten (10) business days after receiving a written decision approving the proposed revised or alternate Financial Assurance, execute and/or otherwise finalize all instruments or other documents required in order to make the selected Financial Assurance(s) legally binding in a form substantially identical to the documents submitted to the EPA as part of the proposal, and such Financial Assurance(s) shall thereupon be fully effective; and (2) submit to the EPA Superfund Division Director all executed and/or otherwise finalized instruments or other documents required in order to make the selected Financial Assurance(s) legally binding within thirty (30) days of receiving a written decision approving the proposed revised or alternate Financial Assurance in accordance with Section XXVII (Notices and Submissions) of the Consent Decree, with a copy to the Remedial Project Manager as specified in Section XXVII of the Consent Decree.
- d. The Settling Defendant shall not cancel the existing Financial Assurance until the Settling Defendant has obtained alternate Financial Assurance, the alternate Financial Assurance has been approved by the EPA and the EPA has given its

written consent permitting the Settling Defendant to cancel the existing Financial Assurance.

32. At least sixty (60) days prior to the Settling Defendant's conveyance of any property interest in the Site or Reduction Plant Property pursuant to Section V of this Amendment, the Settling Defendant shall provide the EPA with an updated cost estimate for the remaining O&M activities and establish a trust fund in accordance with this Amendment into which the Settling Defendant shall place cash equal to 100% of the remaining Financial Assurance obligation required under this Amendment. In addition, the Settling Defendant shall also place into the trust fund an amount in cash which will cover the administrative cost of the trust fund for ten (10) years. The Settling Defendant shall not cancel the existing Financial Assurance until the established trust fund under this Paragraph has been approved by the EPA and the EPA has given its written consent allowing the Settling Defendant to cancel the existing Financial Assurance. If at any time a Successor-in-Title assumes responsibility for the Financial Assurance obligation under the Consent Decree in conformance with this Section and Paragraph 37 of this Amendment, EPA will notify the Settling Defendant pursuant to Paragraph 33 of this Amendment that it is released from its Financial Assurance obligation under the Consent Decree and the trust fund will be terminated in accordance with the Trust Agreement. The Settling Defendant shall not cancel Financial Assurance until: (a) all the conditions in Paragraph 37 of this Amendment are fulfilled; (b) the Successor-in-Title has provided Financial Assurance in conformance with this section of the Amendment; (c) EPA has received, reviewed and approved the Financial Assurance provided by the Successor-in-Title; and (d) the EPA has given its written consent allowing the Settling Defendant to cancel the Financial Assurance.

33. If the Settling Defendant receives written notice from the EPA, in accordance with Paragraph 49 of the Consent Decree, that the Work has been fully and finally completed in accordance with the terms of the Consent Decree, or if the EPA otherwise so notifies the Settling Defendant in writing, the Settling Defendant may thereafter release, cancel, or discontinue the Financial Assurance(s) provided pursuant to this Section. The Settling Defendant shall not release, cancel, or discontinue any Financial Assurance provided pursuant to this Section except as provided in this Paragraph, or Paragraphs 22, 28, 29 and 32 which address the substitution of one form of Financial Assurance for a revised or alternate form of Financial Assurance. Except as provided in Paragraph 30, in the event of a dispute arising under this Paragraph, the Settling Defendant may release, cancel, or discontinue the Financial Assurance(s) required hereunder only in accordance with a final administrative or judicial decision resolving such dispute.

V. Notice to Successors-in-Title

34. Section V, Paragraph 9 of the Consent Decree (Notice of Obligations to Successors-in-Title) is modified to substitute Paragraphs 35 and 37 of this Amendment, for Paragraphs 9.b and 9.c of the Consent Decree.

35. At least sixty (60) days prior to the conveyance of any property interest in the Site or the Reduction Plant Property, including but not limited to fee interests, leasehold interests and mortgage interests, the Settling Defendant shall give the grantee written notice of: (a) the Consent Decree and this Amendment; (b) any environmental covenant created under Sections 5301.80 to 5301.92 of the Ohio Revised Code that confers a right of access to the Site or the Reduction Plant Property and/or to enforce restrictions on the use of such property pursuant to Section VI (Access and Institutional Controls) of this Amendment; and (c) any other instrument

by which an interest in real property has been conveyed that confers a right of access to the Site or Reduction Plant Property or a right to enforce restrictions on use of such property.

36. At least sixty (60) days prior to such conveyance, the Settling Defendant shall also give written notice to the EPA and the State of the proposed conveyance, including the name and address of the grantee and the date on which notice of the Consent Decree and environmental covenants or other instruments described in Paragraph 35 was given to the grantee.

37. In the event of any such conveyance, the Settling Defendant's obligations under the Consent Decree and this Amendment, including, but not limited to, its obligation to provide or secure access and enforceable use restrictions on the Site and Reduction Plant Property, as well as to abide by such institutional controls/use restrictions pursuant to Section VI of this Amendment, shall continue to be met by the Settling Defendant. Except as provided herein, the conveyance of any property interest in the Site or the Reduction Plant Property under no circumstance shall release or otherwise affect the liability of Settling Defendant to comply with all provisions of the Consent Decree, including this Amendment, unless the Settling Defendant and the Successor-in-Title: (a) have a written agreement as to the obligations or Work the Successor-in-Title will assume under the Consent Decree and/or this Amendment; (b) obtain the United States' approval that the Successor-in-Title (i.e., grantee) may undertake some or all of the obligations or Work under the Consent Decree and/or this Amendment; (c) obtain the approval of the United States for a modification to the Consent Decree and/or this Amendment substituting the Successor-in-Title for the Settling Defendant for the specific obligations or Work to be assumed by the Successor-in-Title; and (d) the Successor-in-Title submits to the jurisdiction of this Court and the Court approves a modification to the Consent Decree and/or

this Amendment substituting the Successor-in-Title for the Settling Defendant for the specific obligations or Work to be assumed by the Successor-in-Title.

VI. Access and Institutional Controls

38. Section X, Access, of the Consent Decree is modified to substitute Paragraphs 39 through 45 of this Amendment for Paragraphs 26 through 28 of the Consent Decree.

39. The Settling Defendant shall provide the United States and its representatives, including the EPA and its contractors, with access at all reasonable times to the Site and the Reduction Plant Property to which access is required for the purpose of conducting any activity related to this Consent Decree including, but not limited to, the following activities:

- a. Monitoring the Work.
- b. Verifying any data or information submitted to the United States or the State.
- c. Conducting investigations relating to contamination at or near the Site.
- d. Obtaining samples.
- e. Assessing the need for, planning, or implementing additional response actions at or near the Site.
- f. Assessing implementation of quality assurance and quality control practices as defined in the approved Quality Assurance Project Plans.
- g. Implementing the Work pursuant to the conditions set forth in Section VII (Work Takeover) of this Amendment.
- h. Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by the Settling Defendant or its agents, consistent with Section XXV (Access to Information) of the Consent Decree.

- i. Assessing the Settling Defendant's compliance with the Consent Decree and this Amendment.
- j. Determining whether the Site or the Reduction Plant Property is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted, by or pursuant to the Consent Decree and this Amendment.

40. The Settling Defendant shall refrain from using the Site and the Reduction Plant Property in any manner that would interfere with or adversely affect the implementation, integrity, or protectiveness of the remedial measures to be performed pursuant to the Consent Decree and this Amendment. Such restrictions include, but are not limited to: (a) no construction, excavation, or installation of any building, wells, pipes, roads, ditches or any other structures on the Site without prior written approval of the EPA; (b) no use of groundwater, except for industrial purposes, that underlies the Site and Reduction Plant Property; (c) no use or activity at the Site and the Reduction Plant Property, without prior EPA approval, that can possibly interfere with the operation and maintenance of the remedial action components, including the interceptor wells, Ranney well and monitoring wells; and (d) no residential use on the Site and Reduction Plant Property.

41. The Settling Defendant shall execute and record with the Register of Deeds, Monroe County, Ohio, an environmental covenant pursuant to the Ohio Revised Code ("ORC") §§ 5301.80 to 5301.92, covering the Site and the Reduction Plant Property, that runs with the land, which: (a) grants a right of access for the purpose of conducting any activity related to the Consent Decree including, but not limited to, those activities listed in Paragraph 39 of this Amendment; and (b) grants the right to enforce the land/water use restrictions listed in Paragraph 40 of this Amendment, or other restrictions that the EPA determines are necessary to

implement, ensure non-interference with, or ensure the protectiveness of the remedial measures to be performed pursuant to the Consent Decree. The environmental covenant shall be signed by the EPA. The Settling Defendant and Ormet Corporation (Settling Defendant's parent corporation) shall be the "Holders" of the environmental covenant as defined under ORC § 5301.80. The environmental covenant shall grant authority to enforce the access rights and the rights to enforce the land/water use restrictions to: (a) the United States, on behalf of the EPA, and its representatives; (b) Settling Defendant and its representatives; and (c) Ormet Corporation and its representatives. The Settling Defendant shall, within forty-five (45) days of the Effective Date of this Amendment, submit to the EPA for review and approval with respect to such property:

- a. A draft environmental covenant, in substantially the form attached hereto as Appendix D-1.
- b. A report evidencing the following list of activities that shall be taken by the Settling Defendant, using the Loan Policy of Title Insurance No. 27430024 ("Title Insurance" dated March 28, 2007) issued by the Chicago Title Insurance Company which identifies the liens and encumbrances associated with the Reduction Plant Property, to: (1) determine the viability of each lien and/or encumbrance pertaining to utilities (e.g., gas, electric, water); (2) exercise best efforts to seek a release or subordination of the prior liens and/or encumbrances from the utilities that were recorded prior to the environmental covenant required by the Amendment; and (3) if, despite best efforts, the Settling Defendant is unable to obtain a release or subordination the Settling Defendant shall provide notice to the holder(s) of the liens and/or encumbrances of the existence of the environmental

covenant as well as its conditions and restrictions. The Settling Defendant's report shall at a minimum: (1) provide a list of the liens and encumbrances associated with the Site; (2) provide a list of the utilities holding a lien or encumbrance on the Reduction Plant Property; (3) summarize the steps taken by the Settling Defendant to address the liens and/or encumbrances identified in the Title Insurance that are held or claimed by the utilities; and (4) provide copies of any release or subordination agreements, if obtained, and/or notifications sent to the holders of the liens and encumbrances regarding the environmental covenant.

Within thirty (30) days of the EPA's approval and acceptance of the environmental covenant and the report, the Settling Defendant shall record the environmental covenant with the Register of Deeds, Monroe County, Ohio. Within forty-five (45) days of recording the environmental covenant, the Settling Defendant shall provide the EPA with an updated report, if needed, and a certified copy of the original recorded environmental covenant showing the register's recording stamps. The Settling Defendant shall notify EPA in writing if it becomes aware of or has information come to its attention about any person or persons owning an interest in, holding an encumbrance on, or claiming access to the Site, Reduction Plant Property, or any portion thereof. Such notification is due to EPA within five (5) days of becoming aware of this information or person and shall contain the following information: (a) name of person(s); (b) address of person(s); (c) type of interest, lien, encumbrance and/or access agreement; and (d) if the interest, lien, encumbrance and/or access agreement permits activity on the Site, Reduction Plant Property or portion thereof, that can possibly interfere with the operation or maintenance of the remedial action components including the interceptor well, the Ranney well and monitoring wells. The Settling Defendant shall, if warranted, seek a release or subordination from such person and if,

despite best efforts, the Settling Defendant is unable to obtain a release or subordination the Settling Defendant shall provide notice to the holders of the interest, lien, encumbrance or access agreement of the environmental covenant as well as its conditions and restrictions.

42. Access and water use restrictions on the Rolling Mill Property may be needed to implement and/or protect the integrity of the remedial action components at the Site. The Settling Defendant shall use best efforts to secure from the Hannibal Real Estate LLC., owner, and the Artco Group International, Inc., lessee, of the Rolling Mill Property, or any successor in title to the Rolling Mill Property, any or all of the following:

- a. An agreement to provide access thereto for the Settling Defendant, as well as for the United States on behalf of the EPA, and the State, as well as their representatives (including contractors), for the purpose of conducting any activity related to this Consent Decree including, but not limited to, those activities listed in Paragraph 39 of this Amendment.
- b. An agreement, enforceable by the Settling Defendant and the United States, to refrain from using the Rolling Mill Property in any manner that would interfere with or adversely affect the implementation, integrity, or protectiveness of the remedial measures that have been or are to be performed pursuant to this Consent Decree. Such restrictions include, but are not limited to: (1) no use of groundwater underlying the Rolling Mill Property; and (2) no residential use of the Rolling Mill Property.
- c. The execution and recordation with the Register of Deeds, Monroe County, Ohio, of an environmental covenant pursuant to the Ohio Revised Code ("ORC") §§ 5301.80 to 5301.92, running with the land, that: (1) grants a right of access for

the purpose of conducting any activity related to the Consent Decree including, but not limited to, those activities listed in Paragraph 39 of this Amendment, and (2) grants the right to enforce the land/water use restrictions listed in Paragraph 42.b of this Amendment, or other restrictions that the EPA determines are necessary to implement, ensure non-interference with, or ensure the protectiveness of the remedial measures that have been or are to be performed pursuant to the Consent Decree. The access rights and/or rights to enforce land/water use restrictions shall be granted to: (1) the United States, on behalf of the EPA, and its representatives; and (2) the State and its representatives. The Settling Defendant shall submit to the EPA, within forty-five (45) days after completion of the Ohio Voluntary Action Program ("VAP"), for review and approval with respect to such property the draft environmental covenant. Within fifteen (15) days of the EPA's approval and acceptance of the environmental covenant, the Settling Defendant shall record the environmental covenant with the Register of Deeds, Monroe County, Ohio. Within thirty (30) days of recording the environmental covenant, the Settling Defendant shall provide the EPA with a certified copy of the original recorded environmental covenant showing the register's recording stamps.

43. For purposes of Paragraphs 41 and 42 of this Amendment, "best efforts" includes the payment of reasonable sums of money in consideration of access, access easements, land/water use restrictions, restrictive easements/covenants, and/or an agreement to release or subordinate a prior lien or encumbrance. The Settling Defendant shall promptly notify the United States in writing, and shall include in that notification a summary of the steps that the

Settling Defendant has taken to attempt to comply with Paragraph 42 of this Amendment if any access or land/water use restriction agreements required by Paragraph 42.a or 42.b of this Amendment, or the environmental covenant required by Paragraph 42.c of this Amendment is not submitted to the EPA in draft form within forty-five (45) days of the completion by the Settling Defendant of Ohio's Voluntary Action Program. The United States may, as it deems appropriate, assist the Settling Defendant in obtaining access or land/water use restrictions, either in the form of contractual agreements or in the form of environmental covenants running with the land, or in obtaining the release or subordination of a prior lien or encumbrance. The Settling Defendant shall reimburse the United States in accordance with the procedures in Section XVII (Reimbursement of Response Costs) of the Consent Decree, for all costs incurred, direct or indirect, by the United States in obtaining such access, land/water use restrictions, and/or the release/subordination of prior liens or encumbrances including, but not limited to, the cost of attorney time and the amount of monetary consideration paid or just compensation.

44. If the EPA determines that land/water use restrictions in the form of state or local laws, regulations, ordinances or other governmental controls are needed to implement the remedy selected in the ROD, ensure the integrity and protectiveness thereof, or ensure non-interference therewith, Settling Defendant shall cooperate with the EPA's efforts to secure such governmental controls.

45. Notwithstanding any provision of the Consent Decree or this Amendment, the United States retains all of its access authorities and rights, as well as all of its rights to require land/water use restrictions, including enforcement authorities related thereto, under the Comprehensive Environmental Response, Compensation and Liability Act, as amended

("CERCLA"), Resource Conservation and Recovery Act, as amended ("RCRA") and any other applicable statute or regulations.

VII. Work Takeover

46. Section VII, Work Takeover, of this Amendment is incorporated into the Consent Decree.

47. In the event the EPA determines the Settling Defendant has: (a) ceased implementation of any portion of the Work; or (b) is seriously or repeatedly deficient or late in its performance of the Work; or (c) is implementing the Work in a manner which may cause an endangerment to human health or the environment, the EPA may issue a written notice ("Work Takeover Notice") to the Settling Defendant. Any Work Takeover Notice issued by the EPA will specify the grounds upon which such notice was issued and will provide the Settling Defendant a period of ten (10) days within which to remedy the circumstances giving rise to the EPA's issuance of such notice.

48. If, after expiration of the 10-day notice period specified in Paragraph 47 of this Amendment, the Settling Defendant has not remedied to the EPA's satisfaction the circumstances giving rise to the EPA's issuance of the relevant Work Takeover Notice, the EPA may at any time thereafter assume the performance of all or any portions of the Work as the EPA deems necessary ("Work Takeover"). The EPA shall notify Settling Defendant in writing (which writing may be electronic) if the EPA determines that implementation of a Work Takeover is warranted under this Paragraph.

49. The Settling Defendant may invoke the procedures set forth in Section XX (Dispute Resolution), Paragraph 65, of the Consent Decree, to dispute the EPA's implementation

of a Work Takeover under Paragraph 48 of this Amendment. However, notwithstanding Settling Defendant's invocation of such dispute resolution procedures, and during the pendency of any such dispute, the EPA may in its sole discretion commence and continue a Work Takeover under Paragraph 48 of this Amendment until the earlier of: (a) the date that the Settling Defendant remedies, to the EPA's satisfaction, the circumstances giving rise to the EPA's issuance of the relevant Work Takeover Notice, or (b) the date that a final decision is rendered in accordance with Section XX (Dispute Resolution), Paragraph 65, of the Consent Decree requiring the EPA to terminate such Work Takeover.

50. After commencement and for the duration of any Work Takeover, the EPA shall have immediate access to and benefit of any Financial Assurance provided pursuant to Section IV, Assurance of Ability to Complete Work, of this Amendment, in accordance with the provisions of Paragraph 28 of that Section. If and to the extent that the EPA is unable to secure the resources guaranteed under any such Financial Assurance and the Settling Defendant fails to remit a cash amount up to but not exceeding the estimated cost of the remaining Work to be performed, all in accordance with the provisions of Paragraph 28, any unreimbursed costs incurred by the EPA in performing Work under the Work Takeover shall be considered Future Response Costs that the Settling Defendants shall pay pursuant to Paragraph 52, Section XVI I (Reimbursement of Response Costs), of the Consent Decree.

VIII. Stipulated Penalties

51. Section XXI of the Consent Decree, Stipulated Penalties, is modified to include Paragraphs 52 through 54 of this Amendment.

52. The Settling Defendant shall be liable for penalty amounts set forth in Paragraphs

53 and 54 to the United States for failure to comply with the requirements of this Amendment specified below, unless excused under Section XIX (Force Majeure) or waived under Paragraph 77 of the Consent Decree. "Compliance" by the Settling Defendant shall include completion of the activities under this Amendment or any other work plan, any plan or document approved under the Consent Decree or by the EPA, or compliance schedules under this Amendment and within the specified time schedules established by this Amendment and approved under the Consent Decree.

53. The following stipulated penalties shall accrue per violation per day for failure to meet the following requirements of this Amendment:

- a. Provide Financial Assurance as required in Paragraph 18.
- b. Provide Financial Assurance in accordance with the compliance schedule as set forth in Paragraph 19.
- c. Provide revised or alternate form of Financial Assurance in accordance with Paragraphs 23 or 30.
- d. Provide Financial Assurance by establishing a trust fund as required by, and in accordance with, Paragraph 32.
- e. Execute and record environmental covenants approved by the EPA in accordance with the requirements and schedule set forth in Paragraph 41.
- f. Use best efforts to secure access, land use agreements and/or environmental covenants approved by the EPA from third party landowners in accordance with the requirements and schedule set forth in Paragraphs 41 and 42.
- g. Provide access in accordance with Paragraph 39.

- h. Comply with the land use restrictions set forth in Paragraph 40.

<u>Penalty Per Violation/Per Day</u>	<u>Period of Non-compliance</u>
\$ 1000.00	Days 1-30
\$ 2000.00	Days 31-60
\$ 5000.00	Over 60 days

54. The following stipulated penalties shall accrue per violation per day for failure to provide the following reports or notice as required under the Amendment:

- a. Provide financial reports as set forth in Paragraph 21 of this Amendment.
- b. Provide notice of the activities specified under Paragraphs 20 and 22.a.
- c. Provide appropriate notice to Successors-in-Title as specified in Paragraph 35.
- d. Provide appropriate notice to the EPA and the State as specified in Paragraph 36.
- e. Meet the notice or reporting requirements under Section VI (Access and Institutional Controls).

<u>Penalty Per Violation/Per Day</u>	<u>Period of Non-compliance</u>
\$ 150.00	Days 1-30
\$ 300.00	Days 31-60
\$ 500.00	Over 60 days

55. Pursuant to Paragraph 77 of the Consent Decree, the United States for good cause and in its unreviewable discretion, hereby waives stipulated penalties accrued under the Consent Decree due to the Settling Defendant's failure to provide Financial Assurance for O&M prior to the Effective Date of this Amendment.

IX. Appendices

56. Section XXX, Appendices, of the Consent Decree is modified to substitute Appendices C-1 and D-1 of this Amendment for the original Appendices C and D of the Consent Decree. The attached Appendices to this Amendment are incorporated into the Consent Decree.

- a. "Appendix C-1" is the legal description and map of the Site and the Reduction Plant Property.
- b. "Appendix D-1" contains the draft environmental covenant which specifies the land use restrictions and access rights that will bind present and future owners of, or individuals with a property interest in, the Site or the Reduction Plant Property.

X. Modification of Amendment to the Consent Decree

57. Section XXXII, Modification, of the Consent Decree is revised to incorporate Paragraphs 58 and 60 of this Amendment into the Consent Decree.

58. The Settling Defendant may request a modification of a schedule or deadline under this Amendment. Such request shall be in writing with a detailed explanation as to why the modification is requested.

59. No material modification shall be made to this Amendment without written notification to and written approval of the United States, Settling Defendant, and the Court. Modifications to this Amendment that do not materially alter this Amendment or the Consent Decree may be made by written agreement between the EPA and the Settling Defendant.

60. It is within the United States' sole and unreviewable discretion to: (a) suspend any obligation of the Settling Defendant under this Amendment for any period of time the United States deems warranted without prejudice to its right to reinstate the obligation at any time, and (b) provide an extension of time for any schedule or deadline obligation of the Settling Defendant under this Amendment for any period of time the United States deems warranted.

XI. Effective Date of Amendment to the Consent Decree

61. The effective date of this Amendment to the Consent Decree shall be the date upon which this Amendment is entered by the Court, except as otherwise provided herein.

XII. Lodging and Opportunity for Public Comment

62. This Amendment to the Consent Decree shall be lodged with the Court for a period of not less than thirty (30) days for public notice and comment in accordance with Section 122(d)(2) of CERCLA, 42 U.S.C. § 9622(d)(2), and 28 C.F.R. § 50.7. Comment will be taken only on, and responded to, those terms revising or modifying the Consent Decree. The United States reserves the right to withdraw or withhold its consent if the comments regarding this Amendment to the Consent Decree disclose facts or considerations which indicate that the Amendment to the Consent Decree is inappropriate, improper, or inadequate. Settling Defendant consents to the entry of this Amendment to the Consent Decree without further notice.

63. If for any reason the Court should decline to approve this Amendment on the form presented, this agreement memorialized in this Amendment is voidable at the sole discretion of any Party and the terms of the agreement may not be used as evidence in any litigation between the Parties.

XIII. Signatories to and /Service of the Amendment to the Consent Decree

64. The undersigned representative of the Settling Defendant and the Assistant Attorney General for the Environment and Natural Resources Division of the Department of Justice certify that he or she is fully authorized to enter into the terms and conditions of this Amendment to the Consent Decree and to execute and legally bind such party to this document.

65. The Settling Defendant hereby agrees not to oppose entry of this Amendment to the Consent Decree by this Court or to challenge any provision of this Amendment unless the United States has notified the Settling Defendant in writing that it no longer supports entry of this Amendment to the Consent Decree.

66. The Settling Defendant shall identify, on the attached signature page, the name, address and telephone number of an agent who is authorized to accept service of process by mail on behalf of that party with respect to all matters arising under or relating to the Consent Decree. The Settling Defendant hereby agrees to accept service in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Procedure and any applicable local rules of this court, including but not limited to, service of summons.

XIV. Amended Final Judgment

67. This Amendment to the Consent Decree, the Consent Decree and all appendices and attachments shall constitute the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in the Consent Decree. The Parties acknowledge that there are no representations, agreements or understandings relating to settlement other than those expressly contained in the Consent Decree, as amended.

68. Upon approval and entry of this Amendment to the Consent Decree by the Court, the Consent Decree as amended shall constitute an amended final judgment between and among the United States and the Settling Defendant. The Court finds that there is no reason for delay and therefore enters this Order as an amended final judgment under Fed. R. Civ. P. 54 and 58.

SO ORDERED THIS ____ DAY OF _____, 2008.

UNITED STATES DISTRICT JUDGE

Amendment to the Consent Decree
U.S. v. Ormet Primary Aluminum Corporation
Civil Action No. C2-95-947
Southern District of Ohio

FOR THE UNITED STATES OF AMERICA

11/17/08
Dated

W. BENJAMIN FISHEROW, Deputy Chief
Environmental Enforcement Section
Environment and Natural Resources Division

Nov. 17, 2008
Dated

CHRISTINE J. McCULLOCH
Special Appointment Attorney
Environmental Enforcement Section
Environment and Natural Resources Division
United States Department of Justice
P.O. Box 7611
Washington, D.C. 20044
(202) 305-2020

Amendment to the Consent Decree
U.S. v. Ormet Primary Aluminum Corporation
Civil Action No. C2-95-947
Southern District of Ohio

FOR THE UNITED STATES OF AMERICA (continued)

GREGORY G. LOCKHART
United States Attorney
Southern District of Ohio

Dated

11/19/08

By:

Mark D'Alessandro
Assistant United States Attorney
United States Attorney's Office

Amendment to the Consent Decree
U.S. v. Ormet Primary Aluminum Corporation
Civil Action No. C2-95-947
Southern District of Ohio

FOR THE UNITED STATES OF AMERICA (continued)

11-10-08
Dated

RICHARD C. KARL, Director
Superfund Division
U.S. Environmental Protection Agency

11-12-08
Dated

DEBORAH GARBER
Associate Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection Agency
77 West Jackson Blvd.
Chicago, Illinois 60604
(312) 886-6610

Amendment to the Consent Decree
U.S. v. Ormet Primary Aluminum Corporation
Civil Action No. C2-95-947
Southern District of Ohio

FOR ORMET PRIMARY ALUMINUM CORPORATION

ORMET PRIMARY ALUMINUM
CORPORATION
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(740) 483-1381

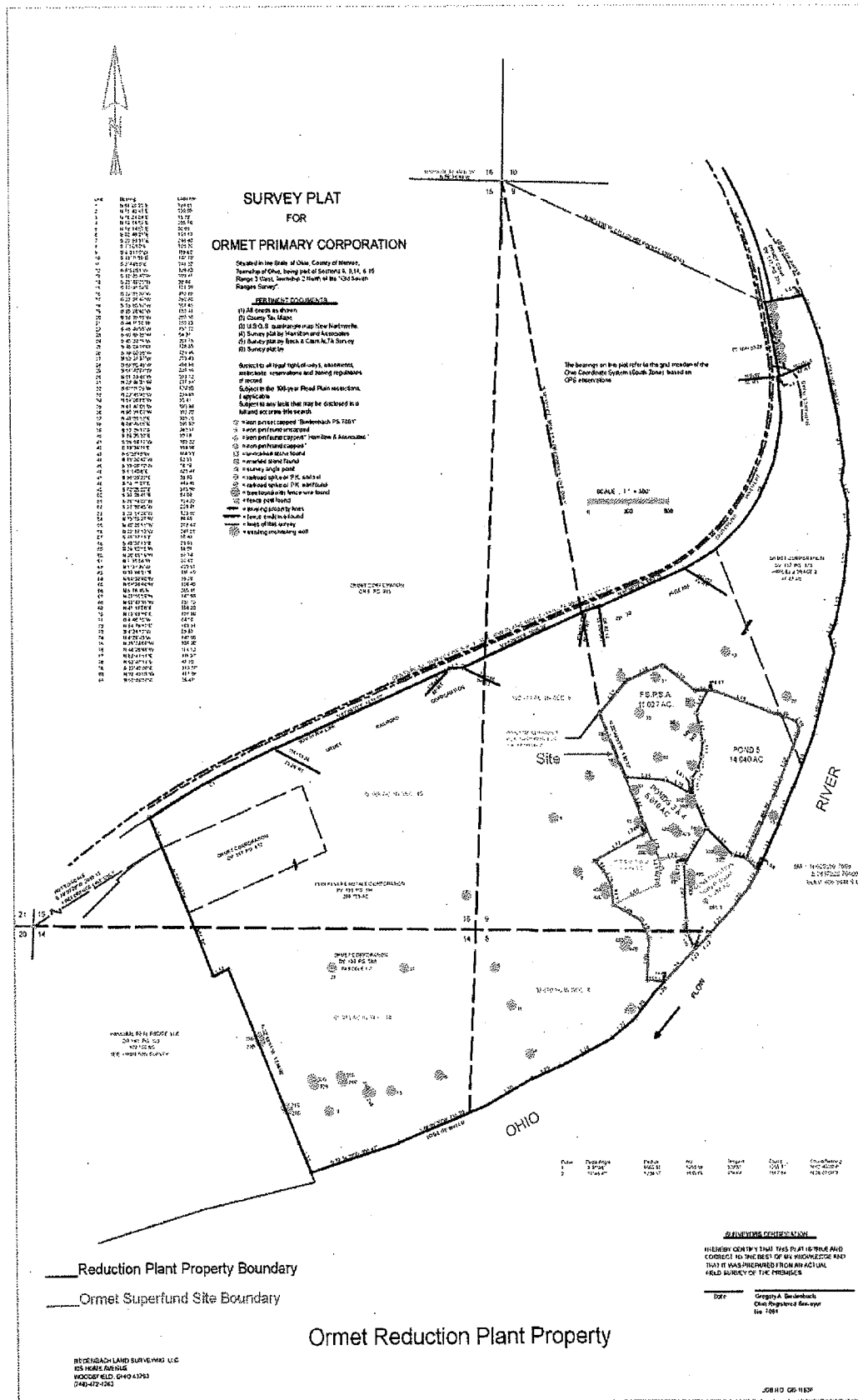
October 29, 2008
Dated

By: JAMES BURNS RILEY
Chief Financial Officer, Treasurer & Secretary
Ormet Primary Aluminum Corporation

The following is the name and address of Settling Defendant's counsel. Counsel may act as agent for service.

Attorney: Charles S. Warren
Kramer Levin Naftalis & Frankel, LLP
1177 Avenue of the Americas
New York, New York 10036
(212) 715-9387
CWarren@KRAMERLEVIN.com

ATTACHMENT C-1



Description of Ormet Superfund Site

Situated in the State of Ohio, County of Monroe, Township of Ohio, being part of Sections 8 and 9, Range 3 West, Township 2 North, of "The Old Seven Ranges Survey", and being bounded and described as follows:

Commencing for reference at a marked stone found at the northwest corner of Section 9 and being the northeast corner of Section 15 (Note: Reference bearing on the north line of the northeast quarter of the northeast quarter of Section 15 used as South 88°34'43" East.);

thence, with a reference line, South 10°33'14" East a distance of 3,806.25 feet to an iron pin, being **THE TRUE POINT OF BEGINNING** for this description;

thence, from said Point of Beginning, North 41°51'19" East a distance of 306.76 feet to an iron pin set;

thence North 68°40'05 " East a distance of 295.93 feet to an iron pin set;

thence South 52°29'17" East a distance of 292.17 feet to an iron pin set;

thence South 89°36'32" East a distance of 137.79 feet to an iron pin set;

thence South 70°11'31" East a distance of 440.45 feet to an iron pin set;

thence South 72°25'22" East a distance of 213.98 feet to an iron pin set;

thence South 30°26'41" East a distance of 64.98 feet to an iron pin set;

thence South 21°14'07" West a distance of 154.95 feet to an iron pin set;

thence South 23°50'45" West a distance of 229.41 feet to an iron pin set;

thence South 22°14'26" West a distance of 129.06 feet to an iron pin set;

thence South 25°42'55" West a distance of 498.92 feet to an iron pin set;

thence South 49°37'15" East a distance of 120.01 feet to a point at the edge of water of the Ohio River, passing through an iron pin set at a distance of plus 96.49 feet;

thence, with the edge of water of said river, the following five courses:

1. thence South 30°28'45" West a distance of 150.41 feet to a point;
2. thence South 39°35'15" West a distance of 203.36 feet to a point;

Description of Ormet Superfund Site

3. thence South 44°11'35" West a distance of 250.23 feet to a point;

4. thence South 46°48'35" West a distance of 196.49 feet to a point;

5. thence South 45°24'11" West a distance of 261.75 feet to a point;

thence, leaving the river, North 84°28'48" West a distance of 136.68 feet to an iron pin set, passing through an iron pin set at a distance of plus 36.28 feet;

thence North 05°15'36" East a distance of 285.41 feet to an iron pin set;

thence North 25°10'56" West a distance of 147.56 feet to an iron pin set;

thence North 62°43'45" West a distance of 231.73 feet to an iron pin set;

thence North 08°29'43" West a distance of 141.06 feet to a point;

thence North 25°24'56" West a distance of 101.96 feet to a point;

thence North 44°26'48" West a distance of 114.72 feet to a point;

thence North 62°47'14" East a distance of 458.17 feet to a point, passing through an iron pin set at a distance of plus 411.07 feet;

thence North 22°49'05" West a distance of 417.88 feet to an iron pin set;

thence North 22°48'53" West a distance of 490.72 feet to the Point of Beginning;

containing 45.355 acres, more or less, of which:

2.373 acres are in Section 8 and

42.982 acres are in Section 9.

Subject to all legal right-of-ways, easements, restrictions, reservations, and zoning regulations of record.

Subject to the right-of-way of State Route No. 7.

Subject to the 100-year Flood Plain restrictions, if applicable.

All iron pins set are 5/8" x 30" rebar capped and labeled "Biedenbach PS 7881".

The above-described parcel is considered "LANDLOCKED" and said survey was performed with the intention that said survey will be used only for delineating the CMSD portion of the Ormet Primary Corporation property.

Page 3 of 3

Description of Ormet Superfund Site

The bearings in this description are for angle calculations only and are based on the grid meridian of the Ohio Coordinate System (South Zone) as based on a GPS observation.

A plat of the above-described survey has been submitted for file at the County Engineer's Office.

The above description prepared by Gregory A. Biedenbach, Ohio Registered Surveyor No. 7881, based on information obtained from an actual field survey of August 8, 2007. Said survey being subject to any facts that may be disclosed in a full and accurate title search.

Prior Deed: Deed Volume 133, Page 381

Deed Volume 137, Page 375

Date

Gregory A. Biedenbach
Ohio Registered Surveyor
No. 7881

Description of Ormet Reduction Plant Property

Situated in the State of Ohio, County of Monroe, Township of Ohio, being part of Sections 8, 9, 14 and 15, Range 3 West, Township 2 North, of "The Old Seven Ranges Survey", and being bounded and described as follows:

Commencing for reference at a marked stone found at the northwest corner of Section 9 and being the northeast corner of Section 15 (Note: Reference bearing on the north line of the northeast quarter of the northeast quarter of Section 15 used as South 88°34'43" East.);

thence, with a reference line, South 66°13'05" East a distance of 2,151.23 feet to an iron pin set in the east right-of-way line of State Route No. 7 as shown on Ohio Department of Highways plans MOE-7-(14.03-14.39) (17.71-21.12) on file at Marietta, Ohio, being **THE TRUE POINT OF BEGINNING** for this description;

thence, from said Point of Beginning leaving said right-of-way line, North 79°14'57" East a distance of 286.14 feet to a point at the edge of water of the Ohio River, passing through an iron pin set at a distance of plus 236.14 feet;

thence, with the edge of water of said river, the following twenty-seven courses:

1. South 22°48'12" East a distance of 128.19 feet to a point;
2. thence South 20°33'57" East a distance of 248.80 feet to a point;
3. thence South 12°43'10" East a distance of 540.18 feet to a point;
4. thence South 07°50'10" East a distance of 306.26 feet to a point;
5. thence South 09°01'16" West a distance of 119.85 feet to a point;
6. thence South 15°11'39" East a distance of 147.73 feet to a point;
7. thence South 02°44'55" East a distance of 241.32 feet to a point;
8. thence South 06°52'51" West a distance of 329.83 feet to a point;
9. thence South 12°35'40" West a distance of 300.97 feet to a point;
10. thence South 25°49'01" West a distance of 99.44 feet to a point;
11. thence South 13°31'09" East a distance of 121.36 feet to a point;
12. thence South 15°24'18" West a distance of 583.54 feet to a point;

Page 2 of 4

Description of Ormet Reduction Plant Property

13. thence South 22°33'39" West a distance of 413.15 feet to a point;
14. thence South 23°21'47" West a distance of 282.80 feet to a point;
15. thence South 25°50'37" West a distance of 361.65 feet to a point;
16. thence South 30°28'45" West a distance of 150.41 feet to a point;
17. thence South 39°35'15" West a distance of 203.36 feet to a point;
18. thence South 44°11'35" West a distance of 250.23 feet to a point;
19. thence South 46°48'35" West a distance of 196.49 feet to a point;
20. thence South 45°24'11" West a distance of 390.60 feet to a point;
21. thence South 39°09'35" West a distance of 220.45 feet to a point;
22. thence South 52°27'37" West a distance of 213.40 feet to a point;
23. thence South 63°00'49" West a distance of 438.89 feet to a point;
24. thence South 67°40'07" West a distance of 227.18 feet to a point;
25. thence South 61°33'48" West a distance of 379.72 feet to a point;
26. thence South 68°08'30" West a distance of 715.90 feet to a point;
27. thence South 72°34'18" West a distance of 695.47 feet to a point in the east line of a 122.100 acres tract as conveyed to Hannibal Real Estate, LLC. by Official Records Volume 161, Page 103 of the Monroe County deed records;

thence, leaving the river and with said Hannibal Real Estate, LLC. property, the following three courses:

1. North 22°48'31" West a distance of 1,556.52 feet to a railroad spike found, passing through an iron pin found capped "Hamilton & Associates" at a distance of plus 217.54 feet;
2. thence South 67°11'29" West a distance of 124.00 feet to an iron pin found capped "Hamilton & Associates";
3. thence North 22°45'49" West a distance of 1,212.57 feet to an iron pin set in the south right-of-way line of State Route No. 7 as shown on the aforementioned right-of-way

Page 3 of 4

Description of Ormet Reduction Plant Property

plans, passing through an iron pin found capped "Hamilton & Associates" at a distance of plus 977.74 feet;

thence, leaving said Hannibal Real Estate, LLC. property and with the south right-of-way line as shown on said right-of-way plans, the following nine courses:

1. with a curve to the right, having a radius of 6,360.51 feet, an arc length of 1,056.59 feet, a chord bearing of North 62°40'26" East a chord distance of 1,055.37 feet to an iron pin set at 78.66 feet right of centerline Station 114+13.24;
2. thence North 67°09'33" East a distance of 1,431.52 feet to an iron pin set 66.00 feet right of centerline Station 128+47.00;
3. thence North 84°25'21" East a distance of 104.81 feet to an iron pin set 94.00 feet right of centerline Station 129+48.00;
4. thence North 67°05'33" East a distance of 1,005.24 feet to an iron pin set 61.80 feet right of centerline Station 139+52.72;
5. thence North 75°43'41" East a distance of 100.66 feet to an iron pin set 73.72 feet right of centerline Station 140+52.67;
6. thence North 67°06'32" East a distance of 690.76 feet to an iron pin set 73.00 feet right of centerline Station 147+32.00;
7. thence, with a curve to the left having a radius of 1,208.57 feet, an arc length of 1,640.65 feet, a chord bearing of North 28°07'04" East a chord distance of 1,517.54 feet to an iron pin set 52.00 feet right of centerline Station 162+57.00;
8. thence North 78°24'04" East a distance of 15.22 feet to an iron pin set 67.00 feet right of centerline Station 162+59.50;
9. thence North 10°36'54" West a distance of 532.15 feet to the Point of Beginning;

containing 317 122 acres, more or less, of which:

- 30.670 acres are in Section 8;
- 152.771 acres are in Section 9;
- 57.313 acres are in section 14 and
- 76.368 acres are in Section 15;

Subject to all legal right-of-ways, easements, restrictions, reservations, and zoning regulations of record.

Subject to the right-of-way of State Route No. 7

Subject to the 100-year Flood Plain restrictions, if applicable.

Page 4 of 4

Description of Ormet Reduction Plant Property

All iron pins set are 5/8" x 30" rebar capped and labeled "Biedenbach PS 7881".

The bearings in this description are for angle calculations only and are based on the grid meridian of the Ohio Coordinate System (South Zone) as based on a GPS observation.

A plat of the above-described survey has been submitted for file at the County Engineer's Office.

The above description prepared by Gregory A. Biedenbach, Ohio Registered Surveyor No. 7881, based on information obtained from an actual field survey of August 8, 2007. Said survey being subject to any facts that may be disclosed in a full and accurate title search.

Prior Deed: Deed Volume 133, Page 381

Deed Volume 137, Page 375

Deed Volume 197, Page 452

Deed Volume 199, Page 588

Official Records Volume 22, Page 855

Date

Gregory A. Biedenbach
Ohio Registered Surveyor
No. 7881

ATTACHMENT D-1

ENVIRONMENTAL COVENANT

This Environmental Covenant is entered into this _____ day of _____, 2008, by and among Owner Ormet Primary Aluminum Corporation and Holders Ormet Corporation and Ormet Primary Aluminum Corporation (as further defined below), pursuant to Ohio Revised Code ("ORC") §§ 5301.80 to 5301.92 for the purpose of subjecting the Site and the Reduction Plant Property (as defined herein) to the activity and use limitations and to the rights of access set forth herein;

WHEREAS, Ormet Primary Aluminum Corporation is the Owner ("Owner") of certain real property located on the west bank of the Ohio River at 43840 State Rout 7, Hannibal, , Monroe County, Ohio, legally described and mapped in Exhibit A hereto, and referred to herein as the "Reduction Plant Property"; and

WHEREAS, Owner, a wholly owned subsidiary of Ormet Corporation, operates an aluminum manufacturing facility on the Reduction Plant Property; and

WHEREAS, the eastern portion of the Reduction Plant Property, legally described and denoted as the "Site" on the map in Exhibit A hereto, comprises the Ormet Superfund Site ("Site"), which Site was placed on the National Priorities List ("NPL") set forth at 40 C.F.R. Part 300, Appendix B, by publication in the Federal Register on September 28, 1985, 50 Fed. Reg. 37950, et seq., pursuant to § 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"), 42 U.S.C. § 9605; and

WHEREAS, the United States Environmental Protection Agency ("U.S. EPA") issued a Record of Decision ("ROD") for the Site on September 12, 1994, in which U.S. EPA determined that remedial actions were required to address the following contaminants of concern released at and from former waste disposal areas located on the Site: cyanide, fluoride, chromium, arsenic, and polynuclear aromatic hydrocarbons (PAHs) in former waste disposal pond solids; PAHs in soils at the former spent potliner storage area (FSPSA); polychlorinated biphenyls (PCBs) and PAHs in soils at the carbon runoff and deposition area (CRDA) and at the construction materials scrap dump (CMSD) and in seeps, and Ohio River water and sediments adjacent to the Site; and fluoride, PCE, cyanide, arsenic, antimony and beryllium in groundwater under the Reduction Plant Property.

WHEREAS, Ormet Primary Aluminum Corporation entered into a Consent Decree with U.S. EPA in the matter of *United States of America vs. Ormet Primary Aluminum Corporation*, Civil Action Number C2-95-947 (S.D. Ohio 1995, effective December 15, 1995, ("Consent Decree"), by which Ormet Primary Aluminum Corporation has been implementing a Remedial Action at the Site, in accordance with the ROD and Statement Of Work ("SOW") which required, *inter alia*, implementation of certain institutional controls/deed restrictions at the Site to prohibit (i) the use of contaminated groundwater except for industrial purposes, (ii) interference with Remedial Action components; (iii) residential use of the Site property; and (iv) excavation,

construction, removal or use of any buildings, wells, pipes, roads, ditches or any other structures at the Site except with EPA's express prior written approval; and

WHEREAS, On January 10, 1996, to comply with the Consent Decree, certain institutional controls/deed restrictions were subsequently recorded in the Monroe County, Ohio land records imposing the above land and water use restrictions on the Site; and

WHEREAS, in May, 2007, pursuant to Section 121(c) of CERCLA, 42 U.S.C. §9621(c), U.S. EPA conducted a review of the remedial action to ensure it continued to protect human health and the environment, and determined that, because the contaminated groundwater plume extends beyond the Site to and under the non-Site portion of the Reduction Plant Property, certain of the recorded deed restrictions on the Site should be expanded geographically to cover the entire Reduction Plant Property;

WHEREAS, on _____, 2008, Ormet Primary Aluminum Corporation entered into an Amendment to the Consent Decree ("Consent Decree Amendment") under which Ormet Corporation agreed to replace the existing institutional controls/deed restrictions with a new environmental covenant covering the entire Reduction Plant Property which conforms with the State of Ohio's recently enacted Ohio Uniform Environmental Covenants Act, ORC §§ 5301.80 to 5301.92; and

WHEREAS, a copy of the Consent Decree, the Consent Decree Amendment and the rest of the Administrative Record for this project can be found in the offices of U.S. EPA, Region 5, Superfund Records Center, 7th Floor, 77 W. Jackson, Chicago, IL 60604; and

WHEREAS, in order to comply with the Consent Decree Amendment and to ensure long term protectiveness of the Remedial Action, Ormet Corporation and Ormet Primary Aluminum Corporation agree to provide U.S. EPA a permanent right of access to and restrict specified uses of the Reduction Plant Property, including the Site, as stated herein;

NOW, THEREFORE, Ormet Primary Aluminum Corporation, as Owner and Holder (as defined herein); Ormet Corporation, as Holder; and U.S. EPA agree to the following:

1. Environmental Covenant. This instrument is an environmental covenant developed and executed pursuant to ORC §§ 5301.80 to 5301.92.

2. Property. This Environmental Covenant concerns a) the Reduction Plant Property, an approximately 317-acre tract of real property owned by Ormet Primary Aluminum Corporation, located on the west bank of the Ohio River at 43840 State Route 7, Hannibal, Monroe County, Ohio, and more particularly described and mapped in Exhibit A attached hereto and incorporated by reference herein; and b) the Ormet Superfund Site (Site), a portion of the Reduction Plant Property consisting of approximately 45 acres, and depicted on the map of the Reduction Plant Property in Exhibit A. Legal descriptions of the Reduction Plant Property and

the Site are also set forth in Exhibit A hereto and incorporated by reference herein.

3. Owner. Ormet Primary Aluminum Corporation ("Owner"), a Delaware corporation which is located at 43840 State Route 7, Hannibal, Ohio 43931, is the owner of the Reduction Plant Property for purposes of ORC §§ 5301.80 to 5301.92.

4. Holders. Owner and Ormet Corporation, a Delaware corporation, with a principal place of business at 43840 State Route 7, Hannibal, Ohio, are each a "Holder" of this Environmental Covenant as that term is defined in ORC §5301.80(F).

5. Agency. U.S. EPA is the Agency, as defined by ORC § 5301.80(B), that approved the environmental response project pursuant to which this Environmental Covenant is created. Pursuant to ORC § 5301.81(B), each right of U.S. EPA under this Environmental Covenant is not an interest in real property.

6. Activity and Use Limitations. As part of conducting the Remedial Action activities required by the Consent Decree, described herein, Owner hereby imposes and agrees to comply with the following activity and use limitations with respect to the Reduction Plant Property:

(A) There shall be no use of or activity at the Reduction Plant Property that would interfere with or adversely affect the integrity or protectiveness of the Remedial Action constructed pursuant to the Consent Decree, or the operation and maintenance of any Remedial Action component, including but not limited to the interceptor wells, Ranney well, groundwater treatment/seep treatment plant, CMSD multilayer cover and FSPSA soil cover, FSPSA soil flushing system, TSCA Cell leachate collection system and leak detection system and monitoring wells; or otherwise impair the effectiveness of any work to be performed pursuant to the ROD, Consent Decree, or SOW, unless prior written approval is obtained from U.S. EPA.

(B) There shall be no use of the groundwater underlying the Reduction Plant Property except for industrial purposes..

(C)

C There shall be no excavation, installation, construction, or use of any buildings, pipes, roads, ditches, or any other structures on the Site except as approved in writing by U.S. EPA.

(D) There shall be no construction of any well on the Reduction Plant Property , except as approved in writing by U.S. EPA.

(E) There shall be no residential use on the Reduction Plant Property . The term

“residential use means (i) single and multifamily dwellings and transient residential units; (ii) day care centers and preschools; (iii) public and private elementary and secondary schools, (iv) hospitals, assisted living facilities and other extended care medical facilities and medical and dental offices; (v) food preparation and food service facilities, including food stores, restaurants, banquet facilities and other food preparation or sales facilities; and (vi) indoor and outdoor entertainment and recreational facilities.

(F) If any event or action by or on behalf of a person who owns an interest in or holds an encumbrance on the Reduction Plant Property , identified in Paragraph 14 below, constitutes a breach of the activity and use limitations herein, Owner or Transferee (defined in Paragraph 7 below) shall notify U.S. EPA within thirty (30) days of becoming aware of the event or action, and shall remedy the breach of the activity and use limitations within sixty (60) days of becoming aware of the event or action, or such other time frame as may be agreed to by the Owner or Transferee and U.S. EPA. This Paragraph 6(G) shall not limit any right of enforcement as set forth in Paragraph 9 or pursuant to ORC § 5301.91.

7. Running with the Land. This Environmental Covenant shall be binding upon the Owner and all assigns and successors in interest, including any Transferee, and shall run with the land, pursuant to ORC § 5301.85, subject to amendment or termination as set forth herein. The term “Transferee,” as used in this Environmental Covenant, shall mean any future owner of any interest in the Reduction Plant Property or any portion thereof, including, but not limited to, owners of an interest in fee simple, mortgagees, easement holders, licensees, and/or lessees.

8. Rights of Access. Owner hereby grants to U.S. EPA, and the Ohio Environmental Protection Agency (“OEPA”), their respective agents, contractors, and employees, the right of access to the Reduction Plant Property, including the Site , for purposes of implementing or enforcing this Environmental Covenant, and for conducting the activities related to the Consent Decree including, but not limited to, (1) monitoring the Work; (2) verifying any data or information submitted to the United States or the State of Ohio; (3) conducting investigations relating to contamination at or near the Site; (4) Obtaining samples; (5) assessing the need for, planning or implementing additional response actions at or near the Site; (6) assessing implementation of quality assurance and quality control practices as defined in the approved Quality Assurance Project Plans; (7) implementing the Work pursuant to the conditions set forth in Section VII of the Consent Decree Amendment (Work Takeover) and/or Section XVI of the Consent Decree (Emergency Response), (8) inspecting and copying records, operating logs, contracts or other documents maintained or generated by Holders or any person performing the Work on behalf of Holders, or their respective agents, consistent with Section XXV (Access to Information) of the Consent Decree; (9) assessing compliance with the Consent Decree and/or this Environmental Covenant; and (10) determining whether the Reduction Plant Property or the Site is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted, by or pursuant to the Consent Decree, as amended. The rights of access granted

under this Paragraph 8 shall be irrevocable while this Environmental Covenant remains in full force and effect.

9. Compliance Enforcement. Compliance with this Environmental Covenant may be enforced pursuant to ORC § 5301.91 by U.S. EPA and its representatives, [OEPA?] and Holders. Failure to timely enforce compliance with this Environmental Covenant or the activity and use limitations contained herein by any party shall not bar subsequent enforcement by such party and shall not be deemed a waiver of the party's right to take action to enforce any non-compliance.

In the event that Owner, a Transferee or any other person should attempt to deny the rights of access granted under Paragraph 8 or should violate the restrictions on use of the Property set forth in Paragraph 6, then, in addition to any rights which U.S. EPA may have under the Consent Decree, U.S. EPA shall have the right to immediately seek an appropriate equitable remedy and any court having jurisdiction is hereby granted the right to issue a temporary restraining order and/or preliminary injunction prohibiting such denial of access or use in violation of restrictions upon application by U.S. EPA without notice or posting of bond. Owner and each subsequent owner of the Reduction Plant Property by accepting a deed thereto or to any part thereof waives all due process or other constitutional right to notice and hearing before the grant of a temporary restraining order and/or preliminary injunction pursuant to this Paragraph 9.

10. Future Cooperation; Execution of Supplemental Instruments. Owner agrees to cooperate fully with U.S. EPA and to assist it in implementing the rights granted U.S. EPA under this Environmental Covenant and, in furtherance thereof, agrees that execution and delivery of such further documents as may be requested by U.S. EPA to supplement or confirm the rights granted hereunder shall not be unreasonably withheld.

12. Cumulative Remedies; No Waiver. All of the rights and remedies set forth in this Environmental Covenant or otherwise available at law or in equity are cumulative and may be exercised without regard to the adequacy of, or exclusion of, any other right, remedy or option available hereunder or under the Consent Decree or at law. The failure to exercise any right granted hereunder, to take action to remedy any violation by Owner of the terms hereof or to exercise any remedy provided herein shall not be deemed to be a waiver of any such right or remedy and no forbearance on the part of U.S. EPA and no extension of the time for performance of any obligations of Owner hereunder shall operate to release or in any manner affect U.S. EPA's rights hereunder.

13. Notice of Conveyance or Proposed Change in Use.

(A) At least thirty days prior to conveyance of any interest in the Reduction Plant Property, or any portion thereof including the Site, and prior to making any application for building permits for, or proposals for any change in use or performing any work or activity on the Site or Reduction Plant Property that affects the Remedial Action, Owner shall notify in writing U.S. EPA and OEPA of such proposed conveyance, change in use, work or activity.

(B) Each instrument hereafter conveying any interest in the Reduction Plant Property or any portion thereof shall contain a notice of the activity and use limitations and grants of access set forth in this Environmental Covenant, and provide the recorded location of this Environmental Covenant. The notice shall be substantially in the following form:

THE INTEREST CONVEYED HEREBY IS SUBJECT TO AN ENVIRONMENTAL COVENANT, DATED _____, 2008, RECORDED IN THE DEED OR OFFICIAL RECORDS OF THE MONROE COUNTY RECORDER ON _____, 200_, IN [DOCUMENT ____, or BOOK ____, PAGE ____]. THE ENVIRONMENTAL COVENANT CONTAINS THE FOLLOWING ACTIVITY AND USE LIMITATIONS AND ACCESS RIGHTS:

(A) There shall be no use of or activity at the Reduction Plant Property that would interfere with or adversely affect the integrity or protectiveness of the Remedial Action constructed pursuant to the Consent Decree, or the operation and maintenance of any Remedial Action component, including but not limited to the interceptor wells, Ranney well, groundwater treatment/seep treatment plant, CMSD multilayer cover and FSPSA soil cover, FSPSA soil flushing system, TSCA Cell leachate collection system and leak detection system and monitoring wells; or otherwise impair the effectiveness of any work to be performed pursuant to the ROD, Consent Decree, or SOW, unless prior written approval is obtained from U.S. EPA.

(B) There shall be no use of the groundwater underlying the Reduction Plant Property except for industrial purposes

(C) there shall be no excavation, installation, construction, or use of any buildings, pipes, roads, ditches, or any other structures on the Site except as approved in writing by U.S. EPA.

(D) There shall be no construction of any well on the Reduction Plant Property, except as approved in writing by U.S. EPA.

(E) There shall be no residential use on the Reduction Plant Property. The term "residential use means (i) single and multifamily dwellings and transient residential units; (ii) day care centers and preschools; (iii) public and private elementary and secondary schools, (iv) hospitals, assisted living facilities and other extended care medical facilities and medical and dental offices; (v) food preparation and food service facilities, including food stores, restaurants, banquet facilities and other food preparation or sales facilities; and (vi) indoor and outdoor entertainment and recreational facilities. (D) Owner and any subsequent

Transferee shall notify U.S. EPA at least thirty (30) days prior to each conveyance of an interest in any portion of the Property.

Such notice shall include the name, address, and telephone number of the Transferee, a copy of the deed or other documentation evidencing the conveyance, a legal description of the property being transferred, a survey map that shows the boundaries of the property being transferred, and the closing date of the transfer of ownership of the property.

14. Representations and Warranties. Owner hereby represents and warrants to the other signatories hereto:

- A. that the Owner is the sole owner of the Property;
- B. that the Owner holds fee simple title to the Property which is subject to the interests or encumbrances identified in Exhibit B attached hereto and incorporated by reference herein;
- C. that the Owner has the power and authority to enter into this Environmental Covenant, to grant the rights and interests herein provided and to carry out all obligations hereunder;
- E. that this Environmental Covenant will not materially violate or contravene or constitute a material default under any other agreement, document or instrument to which Owner is a party or by which Owner may be bound or affected.

15. Amendment or Termination. This Environmental Covenant may be amended or terminated by consent of all of the following: the Owner or a Transferee; Holder Ormet Corporation; and the U.S. EPA, pursuant to ORC § 5301.90 and other applicable law. The rights of a Transferee as to an Amendment or Termination of this Environmental Covenant are governed by the provisions of ORC § 5301.90. The term, "Amendment," as used in this Environmental Covenant, shall mean any changes to the Environmental Covenant, including the activity and use limitations set forth herein, or the elimination of one or more activity and use limitation when there is at least one limitation remaining. The term, "Termination," as used in this Environmental Covenant, shall mean the elimination of all activity and use limitations set forth herein and all other obligations under this Environmental Covenant. This Environmental Covenant may be amended or terminated only by a written instrument duly executed by U.S. EPA, Holder Ormet Corporation and the Owner or Transferee of the Reduction Plant Property or portion thereof as applicable. Within thirty (30) days of signature by all requisite parties on any amendment or termination of this Environmental Covenant, the Owner or Transferee shall file such instrument for recording with the Monroe County, Ohio Recorder's Office; and shall

provide a file- and date-stamped copy of the recorded instrument to U.S. EPA.

16. Severability. If any provision of this Environmental Covenant is found to be unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired.

17. Governing Law. This Environmental Covenant shall be governed by and interpreted in accordance with the laws of the State of Ohio and the United States of America, as applicable.

18. Recordation. Within thirty (30) days after the date of the final required signature upon this Environmental Covenant, Owner shall file this Environmental Covenant for recording, in the same manner as a deed, with the Monroe County, Ohio Recorder's Office.

19. Effective Date. The effective date of this Environmental Covenant shall be the date upon which the fully executed Environmental Covenant has been recorded as a deed record for the Reduction Plant Property and the Site with the Monroe County, Ohio Recorder.

20. Distribution of Environmental Covenant. The Owner shall distribute a file- and date-stamped copy of the recorded Environmental Covenant to: U.S. EPA and OEPA.

21. Notice. All notices, requests, demands or other communications required or permitted under this Environmental Covenant shall be in writing and shall be submitted to:

Ormet Primary Aluminum Corporation:

[need name and address of contact]

Ormet Corporation:

[need name and address of contact]

United States Environmental Protection Agency:

U.S. EPA Region 5

Superfund Division Director

77 West Jackson Blvd.

Chicago, IL 60604

With copies to: 1) Bernard Schorle, Superfund Remedial Project Manager, Superfund Division, U.S. EPA Region 5; and 2) Deborah Garber, Associate Regional Counsel, U.S. EPA Region 5.

Ohio Environmental Protection Agency

[need name and address of contact if OEPA is holder or just is to receive notice]

22. Captions. All paragraph captions are for convenience of reference only and shall not affect the construction of any provision of this Environmental Covenant.

The undersigned representative of Owner and Holder Ormet Corporation represent and certify that they are authorized to execute this Environmental Covenant.

IT IS SO AGREED:

OWNER
ORMET PRIMARY ALUMINUM CORPORATION

By _____

HOLDER
ORMET CORPORATION

By _____

STATE OF _____)
SS.
COUNTY OF MONROE)

On this ____ day of _____, 2008, before me, the undersigned, a Notary Public in and for the State of Ohio, duly commissioned and sworn, personally appeared _____, known to be the person who executed the foregoing instrument on behalf of Ormet Primary Aluminum Corporation and on behalf of Ormet Corporation, and on oath stated that he/she is authorized to execute said instrument on behalf of Ormet Corporation and Ormet Primary Aluminum Corporation.

Witness my hand and official seal hereto affixed the day and year written above.

Notary Public

UNITED STATES OF AMERICA
On behalf of the Administrator of the
United States Environmental Protection
Agency

By _____
Richard C. Karl, Director,
Superfund Division, Region 5

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

On this ____ day of _____, 2008, before me, the undersigned, a Notary Public in and for the State of Illinois, duly commissioned and sworn, personally appeared _____, known to be the person who executed the foregoing instrument, and on oath stated that he is authorized to execute said instrument.

Witness my hand and official seal hereto affixed the day and year written above.

Notary Public

EXHIBIT A

